Syllabi/Synopsis

SECOND DIVISION

[G.R. No. 127195. August 25, 1999]

MARSAMAN MANNING AGENCY, INC. and DIAMANTIDES MARITIME, INC., *petitioners, vs*. NATIONAL LABOR RELATIONS COMMISSION and WILFREDO T. CAJERAS, *respondents*.

D E C I S I O N

BELLOSILLO, *J*.:

MARSAMAN MANNING AGENCY, INC. (MARSAMAN) and its foreign principal DIAMANTIDES MARITIME, INC. (DIAMANTIDES) assail the Decision of public respondent National Labor Relations Commission dated 16 September 1996 as well as its Resolution dated 12 November 1996 affirming the Labor Arbiter's decision finding them guilty of illegal dismissal and ordering them to pay respondent Wilfredo T. Cajeras salaries corresponding to the unexpired portion of his employment contract, plus attorney's fees.

Private respondent Wilfredo T. Cajeras was hired by petitioner MARSAMAN, the local manning agent of petitioner DIAMANTIDES, as Chief Cook Steward on the *MV Prigipos*, owned and operated by DIAMANTIDES, for a contract period of ten (10) months with a monthly salary of US$600.00, evidenced by a contract between the parties dated 15 June 1995. Cajeras started work on 8 August 1995 but less than two (2) months later, or on 28 September 1995, he was repatriated to the Philippines allegedly by mutual consent.

On 17 November 1995 private respondent Cajeras filed a complaint for illegal dismissal against petitioners with the NLRC National Capital Region Arbitration Branch alleging that he was dismissed illegally, denying that his repatriation was by mutual consent, and asking for his unpaid wages, overtime pay, damages, and attorneys fees.i[1] Cajeras alleged that he was assigned not only as Chief Cook Steward but also as assistant cook and messman in addition to performing various inventory and requisition jobs. Because of his additional assignments he began to feel sick just a little over a month on the job constraining him to request for medical attention. He was refused at first by Capt. Kouvakas Alekos, master of the *MV Prigipos*, who just ordered him to continue working. However a day after the ships arrival at the port of Rotterdam, Holland, on 26 September 1995 Capt. Alekos relented and had him examined at the Medical Center for Seamen. However, the examining physician, Dr. Wden Hoed, neither apprised private respondent about the diagnosis nor issued the requested medical certificate allegedly because he himself would forward the results to private respondents superiors. Upon returning to the vessel, private respondent was unceremoniously ordered to prepare for immediate repatriation the following day as he was said to be suffering from a disease of unknown origin.

On 28 September 1995 he was handed his Seaman's Service Record Book with the following entry: *"Cause of discharge - Mutual Consent."*ii[2] Private respondent promptly objected to the

entry but was not able to do anything more as he was immediately ushered to a waiting taxi which transported him to the Amsterdam Airport for the return flight to Manila. After his arrival in Manila on 29 September 1995 Cajeras complained to MARSAMAN but to no avail.iii[3]

MARSAMAN and DIAMANTIDES, on the other hand, denied the imputation of illegal dismissal. They alleged that Cajeras approached Capt. Alekos on 26 September 1995 and informed the latter that he could not sleep at night because he felt something crawling over his body. Furthermore, Cajeras reportedly declared that he could no longer perform his duties and requested for repatriation. The following paragraph in the vessel's Deck Log was allegedly entered by Capt. Alekos, to wit:

Cajeras approached me and he told me that he cannot sleep at night and that he feels something crawling on his body and he declared that he can no longer perform his duties and he must be repatriated.iv[4]

Private respondent was then sent to the Medical Center for Seamen at Rotterdam where he was examined by Dr. Wden Hoed whose diagnosis appeared in a Medical Report as paranoia and other mental problems.v[5] Consequently, upon Dr. Hoeds recommendation, Cajeras was repatriated to the Philippines on 28 September 1995.

On 29 January 1996 Labor Arbiter Ernesto S. Dinopol resolved the dispute in favor of private respondent Cajeras ruling that the latter's discharge from the *MV Prigipos* allegedly by mutual consent was not proved by convincing evidence. The entry made by Capt. Alekos in the Deck Log was dismissed as of little probative value because it was a mere unilateral act unsupported by any document showing mutual consent of Capt. Alekos, as master of the *MV Prigipos*, and Cajeras to the premature termination of the overseas employment contract as required by Sec. H of the *Standard Employment Contract Governing the Employment of all Filipino Seamen on Board Ocean-Going Vessels.* Dr. Hoeds diagnosis that private respondent was suffering from paranoia and other mental problems was likewise dismissed as being of little evidentiary value because it was not supported by evidence on how the paranoia was contracted, in what stage it was, and how it affected respondent's functions as Chief Cook Steward which, on the contrary, was even rated Very Good in respondent's Service Record Book. Thus, the Labor Arbiter disposed of the case as follows:

WHEREFORE, judgment is hereby rendered declaring the repatriation and dismissal of complaint Wilfredo T. Cajeras as illegal and ordering respondents Marsaman Manning Agency, Inc. and Diamantides Maritime, Inc. to jointly and severally pay complainant the sum of USD 5,100.00 or its peso equivalent at the time of payment plus USD 510.00 as 10% attorneys fees it appearing that complainant had to engage the service of counsel to protect his interest in the prosecution of this case.

The claims for nonpayment of wages and overtime pay are dismissed for having been withdrawn (Minutes, December 18, 1995). The claims for damages are likewise dismissed for lack of merit, since no evidence was presented to show that bad faith characterized the dismissal.vi[6]

Petitioners appealed to the NLRC.vii[7] On 16 September 1996 the NLRC affirmed the appealed findings and conclusions of the Labor Arbiter.viii[8] The NLRC subscribed to the view that Cajeras repatriation by alleged mutual consent was not proved by petitioners, especially after noting that private respondent did not actually sign his Seamans Service Record Book to signify his assent to the repatriation as alleged by petitioners. The entry made by Capt. Alekos in the Deck Log was not considered reliable proof that private respondent agreed to his repatriation because no opportunity was given the latter to contest the entry which was against his interest. Similarly, the Medical Report issued by Dr. Hoed of Holland was dismissed as being of dubious value since it contained only a sweeping statement of the supposed ailment of Cajeras without any elaboration on the factual basis thereof.

Petitioners' motion for reconsideration was denied by the NLRC in its Resolution dated 12 November 1996.ix[9] Hence, this petition contending that the NLRC committed grave abuse of discretion: (a) in not according full faith and credit to the official entry by Capt. Alekos in the vessels Deck Log conformably with the rulings in *Haverton Shipping Ltd. v. NLRC*x[10] and *Wallem Maritime Services, Inc. v. NLRC*;xi[11] (b) in not appreciating the Medical Report issued by Dr. Wden Hoed as conclusive evidence that respondent Cajeras was suffering from paranoia and other mental problems; (c) in affirming the award of attorneys fees despite the fact that Cajeras' claim for exemplary damages was denied for lack of merit; and, (d) in ordering a monetary award beyond the maximum of three (3) months salary for every year of service set by RA 8042.

We deny the petition. In the *Contract of Employment*xii[12] entered into with private respondent, petitioners convenanted strict and faithful compliance with the terms and conditions of the Standard Employment Contract approved by the POEA/DOLExiii[13] which provides:

1. The employment of the seaman shall cease upon expiration of the contract period indicated in the Crew Contract unless the Master and the Seaman, by mutual consent, in writing, agree to an early termination x x x x (*underscoring ours*).

Clearly, under the foregoing, the employment of a Filipino seaman may be terminated prior to the expiration of the stipulated period provided that the master and the seaman (a) mutually consent thereto and (b) reduce their consent in writing.

In the instant case, petitioners do not deny the fact that they have fallen short of the requirement. No document exists whereby Capt. Alekos and private respondent reduced to writing their alleged mutual consent to the termination of their employment contract. Instead, petitioners presented the vessel's Deck Log wherein an entry unilaterally made by Capt. Alekos purported to show that private respondent himself asked for his repatriation. However, the NLRC correctly dismissed its evidentiary value. For one thing, it is a unilateral act which is vehemently denied by private respondent. Secondly, the entry in no way satisfies the requirement of a bilateral documentation to prove early termination of an overseas employment contract by mutual consent required by the Standard Employment Contract. Hence, since the latter sets the minimum terms and conditions of employment for the protection of Filipino seamen subject only to the adoption of better terms and conditions over and above the minimum standards,xiv[14] the NLRC could not be accused of grave abuse of discretion in not accepting anything less.

However petitioners contend that the entry should be considered *prima facie* evidence that respondent himself requested his repatriation conformably with the rulings in *Haverton Shipping Ltd. v. NLRC*xv[15] and *Abacast Shipping and Management Agency, Inc. v. NLRC*.xvi[16] Indeed, *Haverton* says that a vessels log book is *prima facie* evidence of the facts stated therein as they are official entries made by a person in the performance of a duty required by law. However, this jurisprudential principle does not apply to win the case for petitioners. In *Wallem Maritime Services, Inc. v. NLRC*xvii[17] the *Haverton* ruling was not given unqualified application because the log book presented therein was a mere typewritten collation of excerpts from what could be the log book.xviii[18] The Court reasoned that since the log book was the only piece of evidence presented to prove just cause for the termination of respondent therein, the log book had to be duly identified and authenticated lest an injustice would result from a blind adoption of its contents which were but *prima facie* evidence of the incidents stated therein.

In the instant case, the disputed entry in the Deck Log was neither authenticated nor supported by credible evidence. Although petitioners claim that Cajeras signed his Seamans Service Record Book to signify his conformity to the repatriation, the NLRC found the allegation to be actually untrue since no signature of private respondent appeared in the Record Book.

Neither could the Medical Report prepared by Dr. Hoed be considered corroborative and conclusive evidence that private respondent was suffering from paranoia and other mental problems, supposedly just causes for his repatriation. Firstly, absolutely no evidence, not even an allegation, was offered to enlighten the NLRC or this Court as to Dr. Hoed's qualifications to diagnose mental illnesses. It is a matter of judicial notice that there are various specializations in medical science and that a general practitioner is not competent to diagnose any and all kinds of illnesses and diseases. Hence, the findings of doctors who are not proven experts are not binding on this Court.xix[19] Secondly, the Medical Report prepared by Dr. Hoed contained only a general statement that private respondent was suffering from paranoia and other mental problems without providing the details on how the diagnosis was arrived at or in what stage the illness was. If Dr. Hoed indeed competently examined private respondent then he would have been able to discuss at length the circumstances and precedents of his diagnosis. Petitioners cannot rely on the presumption of regularity in the performance of official duties to make the Medical Report acceptable because the presumption applies only to public officers from the highest to the lowest in the service of the Government, departments, bureaus, offices, and/or its political subdivisions,xx[20] which Dr. Wden Hoed was not shown to be. Furthermore, neither did petitioners prove that private respondent was incompetent or continuously incapacitated for the duties for which he was employed by reason of his alleged mental state. On the contrary his ability as Chief Cook Steward, up to the very moment of his repatriation, was rated Very Good in his Seamans Service Record Book as correctly observed by public respondent.

Considering all the foregoing we cannot ascribe grave abuse of discretion on the part of the NLRC in ruling that petitioners failed to prove just cause for the termination of private respondent's overseas employment. Grave abuse of discretion is committed only when the judgment is rendered in a capricious, whimsical, arbitrary or despotic manner, which is not true in the present case.xxi[21]

With respect to attorneys fees, suffice it to say that in actions for recovery of wages or where an employee was forced to litigate and thus incurred expenses to protect his rights and interests, a maximum award of ten percent (10%) of the monetary award by way of attorneys fees is legally and morally justifiable under Art. 111 of the Labor Code,xxii[22] Sec. 8, Rule VIII, Book III of its Implementing Rules,xxiii[23] and par. 7, Art. 2208xxiv[24] of the Civil Code.xxv[25] The case of *Albenson Enterprises Corporation v. Court of Appeals*xxvi[26] cited by petitioners in arguing against the award of attorneys fees is clearly not applicable, being a civil action for damages which deals with only one of the eleven (11) instances when attorneys fees could be recovered under Art. 2208 of the Civil Code.

Lastly, on the amount of salaries due private respondent, the rule has always been that an illegally dismissed worker whose employment is for a fixed period is entitled to payment of his salaries corresponding to the unexpired portion of his employment.xxvii[27] However on 15 July 1995, RA 8042 otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995 took effect, Sec. 10 of which provides:

Sec. 10. In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of the employment contract or for three (3) months for every year of the unexpired term whichever is less (*underscoring ours*).

The Labor Arbiter, rationalizing that the aforesaid law did not apply since it became effective only one (1) month after respondent's overseas employment contract was entered into on 15 June 1995, simply awarded private respondent his salaries corresponding to the unexpired portion of his employment contract, i.e., for 8.6 months. The NLRC affirmed the award and the Office of the Solicitor General (OSG) fully agreed. But petitioners now insist that Sec. 10, RA 8042 is applicable because although private respondents contract of employment was entered into before the law became effective his alleged cause of action, i.e., his repatriation on 28 September 1995 without just, valid or authorized cause, occurred when the law was already in effect. Petitioners' purpose in so arguing is to invoke the law in justifying a lesser monetary award to private respondent, i.e., salaries for three (3) months only pursuant to the last portion of Sec. 10 as opposed to the salaries for 8.6 months awarded by the Labor Arbiter and affirmed by the NLRC.

We agree with petitioners that Sec. 10, RA 8042, applies in the case of private respondent and to all overseas contract workers dismissed on or after its effectivity on 15 July 1995 in the same way that Sec. 34,xxviii[28] RA 6715,xxix[29] is made applicable to locally employed workers dismissed on or after 21 March 1989.xxx[30] However, we cannot subscribe to the view that private respondent is entitled to three (3) months salary only. A plain reading of Sec. 10 clearly reveals that the choice of which amount to award an illegally dismissed overseas contract worker, i.e., whether his salaries for the unexpired portion of his employment contract or three (3) months salary for every year of the unexpired term, whichever is less, comes into play only when the employment contract concerned has a term of at least one (1) year or more. This is evident from the words for every year of the unexpired term which follows the words salaries x x x for three months. To follow petitioners thinking that private respondent is entitled to three (3) months salary only simply because it is the lesser amount is to completely disregard and

overlook some words used in the statute while giving effect to some. This is contrary to the well-established rule in legal hermeneutics that in interpreting a statute, care should be taken that every part or word thereof be given effectxxxi[31] since the law-making body is presumed to know the meaning of the words employed in the statue and to have used them advisedly.xxxii[32] *Ut res magis valeat quam pereat*.xxxiii[33]

WHEREFORE, the questioned Decision and Resolution dated 16 September 1996 and 12 November 1996, respectively, of public respondent National Labor Relations Commission are AFFIRMED. Petitioners MARSAMAN MANNING AGENCY, INC., and DIAMANTIDES MARITIME, INC., are ordered, jointly and severally, to pay private respondent WILFREDO T. CAJERAS his salaries for the unexpired portion of his employment contract or USD$5,100.00, reimburse the latter's placement fee with twelve percent (12%) interest per annum conformably with Sec. 10 of RA 8042, as well as attorney's fees of ten percent (10%) of the total monetary award. Costs against petitioners.

SO ORDERED.

Mendoza, Quisumbing, and Buena, JJ., concur.

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i[1] Wilfredo T. Cajeras *v*. Marsaman Manning Agency, Inc., and Diamantides Maritime Inc., NLRC NCR Case No. 00-11-00671-95.

ii[2] *Id*., p. 23.

iii[3] Complaints Position Paper, Original Records, pp. 16-23.

iv[4] *Id*., p. 36.

v[5] *Id*., p. 37.

vi[6] *Id*., pp. 57-64.

vii[7] Wilfredo T. Cajeras *v.* Marsaman Manning Agency Inc., and Diamantides Maritime Inc., NLRC NCR CA No. 010825-96.

viii[8] *Rollo*, pp. 58-67.

ix[9] *Id.*, pp. 52-56.

x[10] G.R. No. 65442, 15 April 1985, 135 SCRA 685.

xi[11] G.R. Nos. 81124-26, 23 June 1988, 162 SCRA 541.

xii[12] Original Records, p. 22.

xiii[13] Philippine Overseas Employment Administation/Department of Labor and Employment.

xiv[14] Sec. 3, Rule II, Book V, Rules and Regulations Governing Overseas Employment (also known as the POEA Rules and Regulations).

xv[15] See Note 10.

xvi[16] See Note 11.

xvii[17] G.R. No. 108433, 15 October 1996, 263 SCRA 174.

xviii[18] *Id*., p. 183.

xix[19] Librea *v*. Employees Compensation Commission, G.R. No. 58879, 14 November 1991, 203 SCRA 545, 552; Nemaria *v*. Employees Compensation Commission, G. R. No. 57889, 28 October 1987, 155 SCRA 166, 173; Medina *v.* Employees Compensation Commission, G.R. No. 62406, 22 March 1984, 128 SCRA 349, 354-355.

xx[20] Ambrosio Padilla, Revised Rules on Evidence Annotated, Vol. II, 6th Ed. (1994), p. 180.

xxi[21] Singa Ship Management Philippines, Inc. *v*. NLRC, G.R. No. 119080, 14 April 1998, 288 SCRA 692, 698-699.

xxii[22] (a) In cases of unlawful withholding of wages the culpable party may be assessed attorneys fees equivalent to ten percent of the amount of wages recovered.

(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of the wages, attorneys fees, which exceed ten percent of the amount of wages recovered.

xxiii[23] Attorneys fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10% of the amount awarded.

xxiv[24] In the absence of stipulation, attorneys fees and expenses of litigation, other than judicial costs, cannot be recovered, except: x x x x (7) In actions for the recovery of wages of household helpers, laborers and skilled workers x x x x

xxv[25] Philippine National Construction Corporation *v*. NLRC, G.R. No. 107307, 11 August 1997, 277 SCRA 91, 105; Sebuguero *v*. NLRC, G.R. No. 115394, 27 September 1995, 248 SCRA 532, 548.

xxvi[26] G.R. No. 88694, 11 January 1993, 217 SCRA 16.

xxvii[27] Vinta Maritime Co., Inc. *v*. NLRC, G.R. No. 113911, 23 January 1998, 284 SCRA 656, 659, citing Better Building, Inc. *v*. NLRC, G.R. No. 109714, 15 December 1997; Anderson *v*. NLRC, G.R. No. 111212, 22 January 1996, 252 SCRA 116, 126; Teknika Skills and Trade Services, Inc. *v*. NLRC, G.R. No. 100399, 4 August 1992, 212 SCRA 132, 140; Wallem Phil. Shipping, Inc. *v*. Minister of Labor, G.R. Nos. 50734-37, 20 February 1981, 102 SCRA 835, 842-843; Knust *v*. Morse, 41 Phil. 184 (1920); Logan *v*. Philippine Acetylene Co., 33 Phil. 177 (1916).

xxviii[28] Amending Art. 279 of The Labor Code.

xxix[29] An Act to Extend Protection to Labor, Strengthen the Constitutional Rights of Workers to Self-Organization, Collective Bargaining and Peaceful Concerted Activities, Foster Industrial Peace and Harmony, Promote the Preferential Use of Voluntary Modes of Settling Labor Disputes and Reorganize the National Labor Relations Commission, Amending Presidential Decree No. 441, as Amended, Otherwise known as The Labor Code of the Philippines, Appropriating Funds Therefor and for Other Purposes.

xxx[30] See Surima *v*. NLRC, G.R. No. 121147, 26 June 1998, 291 SCRA 260, 268.

xxxi[31] JMM Promotion & Management, Inc. *v*. NLRC, G.R. No. 109835, 22 November 1993, 228 SCRA 129, 134.

xxxii[32] Aparri *v*. Court of Appeals, No. L-30057, 31 January 1984, 1`27 SCRA 231, 241.

xxxiii[33] "That the thing may rather have effect than be destroyed."